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FISCAL IMPACT STATEMENT

LS 7235 | **NOTE PREPARED:** Feb 5, 2004
BILL NUMBER: HB 1309 | **BILL AMENDED:** Jan 29, 2004

SUBJECT: Worker's Compensation.

FIRST AUTHOR: Rep. Liggett | **BILL STATUS:** As Passed House
FIRST SPONSOR:

FUNDS AFFECTED: X **GENERAL** | **IMPACT:** State & Local
X **DEDICATED**
X **FEDERAL**

Summary of Legislation: (Amended) This bill increases the term of board members from 4 to 12 years. It establishes a performance evaluation committee to review the performance of board members. The bill authorizes the board to appoint board ombudsmen to determine issues arising under worker's compensation, with certain exceptions. It requires ombudsmen to report their findings in an evidentiary hearing to the board and requires a board member to enter the final order or award.

The bill establishes a process for transferring or redirecting an employee's medical treatment to another physician. It provides for a uniform two-year statute of limitations for worker's compensation and occupational disease claims. It also establishes a penalty for failure to timely pay temporary total disability compensation or a final judgment. The bill also requires the appointment of an independent medical examiner when an employee's temporary total disability or permanent partial impairment rating is not determined by the attending physician.

The bill increases worker's compensation and occupational disease benefits. This bill increases the minimum average weekly wage. It revises the funding mechanism for the Second Injury Fund (fund). It also extends fund coverage to occupational diseases.

The bill authorizes a 10% prejudgment interest rate for disputed worker's compensation and occupational disease claims.

This bill establishes “disabled from trade compensation. It establishes a fine for failure to pay assessments into the Second Injury Fund. The bill requires the board to refer an insurance carrier that does not pay the assessments to the Department of Insurance for administrative action for committing an unfair or deceptive act and practice.

It authorizes an assessment based on written premium and self-insured employers to fund the administrative expenses of the board.

The bill increases burial payment.

Effective Date: July 1, 2004.

Explanation of State Expenditures: *Worker's Compensation Board:* The bill makes changes to the Workers' Compensation Board (WCB). Currently, members of the board have to be an attorney of recognized qualifications. The bill would require the member to be a member of the Indiana bar for at least five years. It also provides that the salary of members would be the salary of a superior court judge, currently $90,000, and nonsalary benefits provided to judges. The fiscal impact of the salary increase would be about $383,000 annually. The impact does not include the increase in pension costs incurred because the board members would become members of the 1997 Judges' Retirement Fund instead of the Public Employees Retirement Fund. The increase in pension costs would be between $72,450 and $201,600 annually. The estimated unfunded accrued liability of the 1997 Judges' Retirement Fund is about $71 M. WCB members would be appointed for 12 years instead of the current 4-year term, and a review of their performance would be required every 4 years by the Performance Evaluation Committee.

The bill creates the WCB Performance Evaluation Committee consisting of five members to review the performance of WCB board members. Members are eligible for per diem and travel expenses. Expenses for the committee would probably be about $20,000 annually.

The bill allows the board to appoint ombudsmen to conduct prehearing conferences, evidentiary hearings, and other duties. The ombudsmen would help the board reduce the backlog of appeals the board currently has on file. If the board would need 3 or 4 ombudsmen classified as Workers' Compensation Specialist 2, the estimated cost of the ombudsmen would be between $138,411 and $183,505 per year

The bill provides that the administrative costs of the board are to be paid by an assessment on written premiums and self-insured employers. The WCB's administrative costs for FY 2005 are budgeted at $1.8 M. General Fund expenditures would decrease by about $1.8 M due to the assessment. The assessment would cover the increased cost of the bill.

Medical Treatment Procedure: The bill does not allow the transfer of treatment after medical treatment under worker's compensation has begun unless the employee requests transfer, the attending physician requests that the physician's treatment be discontinued, or WCB determines there is good cause for the transfer. WCB may incur some cost if there are requests for transfer for good cause from employers, but the increase in expense would probably be minor. Other state costs might occur as an employer.

Length of Disability to get Benefits: Currently, temporary total disability compensation benefits begin the 8th day after the disability, and the disability has to continue for 21 or more days to get compensation for the first 7 days. The bill changes the day benefits begin to the third day and benefits are provided for the first 3 days if the disability continues for at least 14 days. The bill also provides for a penalty of 10% per day of the unpaid amount due an employee. The maximum penalty is twice the unpaid temporary total disability compensation due the employee. The bill could increase the number of disability compensation claims. The maximum increase per claim would be between $573 and $1,002 for FY 2005. The total impact is unknown.

Permanent Partial Impairment: This bill increases the rates for calculating permanent partial impairment compensation under the worker's compensation and occupational disease law. The rates traditionally vary depending on the degree of impairment resulting from the injury. A different set of rates each year for two years are established by this bill (see Table A below). The rates are effective for injuries and disablement occurring after the date shown in each column.

Table A: Permanent Partial Impairment Rates.				
Permanent Partial Impairment Degrees of Injury	**Current**	**Effective July 1, 2004**	**Effective July 1, 2005**	**Effective July 1, 2006**
1-10 Degrees	$1,300	$1,900	$2,100	$2,300
11-35 Degrees	$1,500	$2,100	$2,300	$2,500
36-50 Degrees	$2,400	$3,600	$4,000	$4,400
Over 50 Degrees	$3,000	$4,600	$5,000	$5,500

Average Weekly Wage: This bill increases the maximum average weekly wage used in the determination of compensation for temporary total disability, temporary partial disability, and total permanent disability (see Table B). Medical benefits are determined by the degree of impairment and are not based on the wage. The bill also increases the maximum compensation (exclusive of medical benefits) that may be paid for an injury under the worker's compensation and occupational disease law. New maximum compensation limits are added for injuries occurring after July 1, 2003, and July 1, 2004 (see Table B below).

Table B: Average Weekly Wage Additions (For Worker's Compensation and Occupational Disease).				
	FY 2003 (Current)	**FY 2005 (Proposed)**	**FY 2006 (Proposed)**	**FY 2007 (Proposed)**
Minimum Weekly Wages	$75	40 * State Min Wage	40 * State Min Wage	40 * State Min Wage
Maximum Weekly Wages	$822	$1,002	$1,062	$1,122

State minimum wage is currently $4.25, so the proposed minimum benefit would be $170.

Maximum Compensation: The bill increases the maximum compensation, excluding medical benefits, that may be paid for an injury from $294,000 to$334,000 for FY 2005, $354,000 for FY 2006, and $374,000 for FY 2007.

It is difficult to determine the potential cost of these changes. P.L. 31-2000 included similar types of adjustments, although the magnitude of the adjustments was different An actuarial analysis of these changes is being performed by the National Council on Compensation Insurance (NCCI). [Note: The results of the actuarial analysis are not currently available. The note will be updated when NCCI finishes their analysis.] According to the Indiana Compensation Rating Bureau, premiums decreased by 1.9% for 2003 and decreased by 1.8% for 2004. Premiums for workers' compensation for 2002 were about $700 M.

(Revised) *Burial Payment:* The bill increase the burial expenses under worker's compensation from $6,500 to $8,500.

The state is impacted as an employer. The state spent $3.7 M in FY 1999, $3.9 M in FY 2000, $4.5 M in FY 2001, $5.3 M in FY 2002, and $5.0 M in FY 2003 on worker's compensation payments.

Disabled from Trade: The bill establishes the "disabled from trade compensation benefits. Under this proposal, if an employee sustains an injury or occupational disease resulting in temporary total disability or permanent partial impairment but is able to return to work at a lower-paying position, the employee may be compensated for the difference between his/her former and current wages. "Disabled from trade compensation would be available in addition to any other compensation awarded for such injuries. The actual amount compensated would be based on the employee's average weekly earnings and would be capped at $762 per week. Eligibility for "disabled from trade compensation is limited to 52 consecutive weeks or 78 aggregate weeks.

The exact impact of this provision is difficult to determine. The Worker's Compensation Board does not collect information concerning the number of workers that cannot return to work at their original position. However, as the majority of workplace injuries would not prevent an employee from returning to his/her previous position, it is unlikely that the additional costs resulting from this proposal would represent a significant increase in worker's compensation payments. This provision could also reduce worker's compensation payments if employees return to work sooner and the "disabled from trade compensation benefits are less than temporary total disability benefits.

Prejudgement Interest: The bill provides prejudgement interest based on a rate of 10% per year accruing from the date of filing of the application of adjustment of claim. The potential impact is unknown. The impact would depend on the amount of the claim and the processing time of a claim that goes to the Worker's Compensation Board or the courts. *Example:* If the claim was $600 per week and the claim took six months to be determined by the Board or a court, then the interest for the claim would be about $363.

Explanation of State Revenues: The bill requires the WCB to assess a surcharge on insurers and self-insurers of worker's compensation to pay the operation of WCB. The WCB's administrative costs for FY 2005 are budgeted at $1.8 M.

Second Injury Fund Assessment: Current law allows the Worker's Compensation Board to assess a fee of 2.5% of the total amount of worker's compensation paid to injured employees or their beneficiaries if the balance in the fund is less than $1,500,000 on October 1. The Second Injury Fund had a balance of $1,518,133 on June 30, 2003, but had an outstanding loan of $206,000. The benefits paid from the fund for FY 2003 were $2,904,708, and assessments totaled $2,708,851. The assessment is limited to the amount recommended by the actuary.

The impact on the state is as an employer. The state is self-insured, so the impact would equal any increase in benefits at the time of the second disability.

Explanation of Local Expenditures: Local governments and school corporations could incur an indeterminable increase in expenses as a result of these proposals (see *Explanation of State Expenditures*). Like the state, most of these units are self-insured and would directly bear any additional costs related to "disabled from trade compensation. For any entities purchasing private worker's compensation insurance, the cost of insurance premiums would likely increase as a result of this proposal.

Explanation of Local Revenues:

State Agencies Affected: Worker's Compensation Board; All State Agencies.

Local Agencies Affected: All Local Units of Government.

Information Sources: Indiana Compensation Ratings Bureau website, http://www.icrb.net and Illinois Industrial Commission FY 2002 Annual Report.

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